

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SHAWN HAMPTON,

Plaintiff

V.

JOHN E. WETZEL, et al.

Defendants

• • • • •

Civil Case No. 1:12-CV-434

Judge Christopher C. Conner

Civil Action - Law

Electronically filed

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO THE AMENDED COMPLAINT

Defendants, by and through their attorney, hereby respond to the Amended Complaint as follows:

FIRST DEFENSE

DEFENDANTS

A.-C. ADMITTED.

D. DENIED as stated. Margaret Gordon is employed by the PA Department of Corrections as the Dietary Services Specialist.

E.-F. ADMITTED.

G. DENIED as stated. Gary Sowash is employed at SCI- Rockview as the Food Services Manager II.

H.-I. ADMITTED.

STATEMENT OF CLAIMS

1. ADMITTED.

2. ADMITTED.

3. ADMITTED in part and DENIED as stated. It is ADMITTED that Deputy Marsh had a conversation after the July, 2011 PRC and informed plaintiff that there would be no therapeutic diet bags from inmates in the RHU observing Ramadan. After reasonable investigation, defendants are without sufficient information or knowledge as to the truth of this paragraph and therefore it is DENIED.

4. After reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of this paragraph and therefore it is DENIED.

5. ADMITTED.

6. ADMITTED in part and DENIED in part. It is ADMITTED that on August 5, 2011, plaintiff sent two inmate requests to staff addressed to defendant Winkleman. It is DENIED as stated as to the exact contents of both inmate requests to staff and the August 8, 2011 responses from defendant Winkleman.

After reasonable investigation, defendants are without information or knowledge sufficient to form a belief as to the truth of what plaintiff did and therefore this averment is DENIED.

7. After reasonable investigation, defendants are without sufficient information or knowledge as to the truth of this paragraph and therefore it is DENIED.

8. DENIED as stated. There was nothing in the August 11, 2011 inmate requests to defendant Williams asking if plaintiff was cleared to fast for Ramadan.

9. After reasonable investigation, defendants are without sufficient knowledge or information to form a belief as to the truth of this paragraph and therefore it is DENIED.

10. ADMITTED in part and DENIED in part. It is ADMITTED that on August 15, 2011, plaintiff sent an inmate request to staff to defendant Wetzel stating that his therapeutic diet tray was stopped because he was following the tenets of his religion by fasting. Defendants are without knowledge as to why plaintiff wrote to defendant Wetzel, therefore this averment is DENIED. After reasonable investigation, defendants are without information or knowledge sufficient to form a belief as to the truth of the remainder of the averments in this paragraph and therefore they are DENIED.

11. ADMITTED.

12. -13. After reasonable investigation, defendants are without sufficient knowledge or information to form a belief as to the truth of these paragraphs and therefore they are DENIED.

14. ADMITTED.

15. ADMITTED in part and DENIED in part. It is ADMITTED that plaintiff had a discussion with Deputy Marsh about his “request.” After reasonable investigation, defendants are without sufficient knowledge or information to form a belief as to the truth as to the remaining allegations contained in this paragraph and therefore they are DENIED.

16. -17. After reasonable investigation, defendants are without sufficient knowledge or information to form a belief as to the truth of these paragraphs and therefore they are DENIED.

18. ADMITTED that on August 31, 2011, defendant Ellers wrote to plaintiff and in that letter, defendant Ellers wrote a sentence “A full analysis of the menu may be reviewed in the Food Service Manager’s office at SCI-Rockview.” By way of further response, plaintiff’s letter to Ellers was asking about caloric content of the DOC’s Master Menu.

19. ADMITTED that on September 3, 2011, plaintiff wrote defendant Sowash asking for a copy of the Department's master menu to review for caloric content and nutritional value. It is also ADMITTED that on September 11, 2011, defendant Sowash wrote plaintiff that he would review the master menu with plaintiff once plaintiff was no longer in the Restricted Housing Unit, but would not send a copy to plaintiff in case it got lost. It is further ADMITTED that defendant Sowash wrote that the master menu was available in the library.

20. ADMITTED.

21. DENIED as stated. On September 6, 2011, Grievance Officer Leilani Sears wrote plaintiff regarding the August 15, 2011 Inmate Request to Secretary Wetzel and that Ms. Sears wrote "Your recent Inmate's Request to Staff Member Addressed to Secretary Wetzel regarding your therapeutic diet tray was forwarded to this office. A review of your grievance records reveals that you filed Grievance No. 37868 regarding concerns about your therapeutic diet trays. The initial review response is pending. Please allow facility staff time to address your concerns. You used the grievance system to have your concerns addressed. They will not be re-addressed in this forum." It is DENIED that the September 6, 2011 correspondence was in response to any correspondence other than the August 15, 2011 Inmate Request to Staff Member addressed to Secretary Wetzel."

22. ADMITTED.

23. ADMITTED in part and DENIED in part. It is ADMITTED that more than half of the foods that are provided during the Holy month of Ramadan contain onions, the remaining allegations contained in the paragraph are DENIED.

24. DENIED

25. ADMITTED.

26.-27. DENIED.

28. -35. These paragraphs contain conclusions of law to which no response is required. To the extent they are deemed to be factual, these paragraphs are DENIED.

36. After reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of this paragraph and therefore it is DENIED.

37. DENIED.

38. ADMITTED in part and DENIED in part. It is ADMITTED that defendants Kephart and Rev. Klemm are the authors of the 2011 Observances of Ramadan, Eid-al-Fitr and Eid al-Adha Prayers and Meals. The remaining allegations contained in this paragraph are DENIED.

39. DENIED.

SECOND DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Amended Complaint is barred in part by failure to exhaust administrative remedies pursuant to the PLRA.

FOURTH DEFENSE

At no time did the defendants, either individually or in concert with others, deprive or seek to deprive plaintiff of any rights, privileges or immunities secured by the Constitution or laws of the United States.

FIFTH DEFENSE

Plaintiff is entitled to no relief, whether compensatory, declaratory, punitive or otherwise.

Respectfully submitted,

LINDA L. KELLY
Attorney General

By: /s/ Maryanne M. Lewis
MARYANNE M. LEWIS
Senior Deputy Attorney General
Attorney I.D. # 83812

GREGORY R. NEUHAUSER
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
Phone: (717) 787-9719 (Direct)
Fax: (717) 772-4526
mlewis@attorneygeneral.gov

DATE: June 11, 2012

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SHAWN HAMPTON,

Plaintiff

V.

JOHN E. WETZEL, et al.

Defendants

• • • • •

Civil Case No. 1:12-CV-434

Judge Christopher C. Conner

Civil Action - Law

Electronically filed

CERTIFICATE OF SERVICE

I, Maryanne M. Lewis, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on, June 11, 2012, I caused to be served a true and correct copy of the foregoing document titled Defendants' Answer and Affirmative Defenses to the Amended Complaint by First Class, U.S. Mail to the following:

Shawn Hampton, GY#4945
SCI-Rockview
P.O. Box A
Bellefonte, PA 16823

/s/ Maryanne M. Lewis
MARYANNE M. LEWIS
Senior Deputy Attorney General